Court File Nos.:COA-26-CV-0836 COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant/Cross-Respondent)
Respondent on Motion

and

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

-and-

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents (Respondents/Cross-Applicants)
Respondents on Motion

MOTION RECORD OF THE PROPOSED INTERVENERS

Charter Committee on Poverty Issues and the National Right to Housing Network

October 21, 2026

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The Mental Health Legal Committee

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TAB 1

FORM 61M

Courts of Justice Act

NOTICE OF MOTION BEFORE A SINGLE JUDGE – COURT OF APPEAL

File No. COA-26-CV-0836 / COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant/Cross-Respondent)
Respondent on Motion

and

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

and

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents (Respondents/Cross-Applicants)
Respondents on Motion

NOTICE OF MOTION BEFORE A SINGLE JUDGE

THE PROPOSED INTERVENERS, the Charter Committee on Poverty Issues (CCPI) and the National Right to Housing Network (NRHN), represented by a single counsel, will make a motion to a judge of the Court of Appeal for Ontario on a date to be fixed by the Court, or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard (choose appropriate option)

[X] In writing under subrule 37.12.1(1) because it is on consent;

[X] In writing

[ ] In person;

[ ] By telephone conference;

[ ] By video conference.

THE MOTION IS FOR

(a) Leave to intervene as friends of the court in this appeal pursuant to Rule 13.02, to:

(i) file a joint factum of up to 10 pages, or such other length as the Court may permit; and,

(ii) to make oral submissions at the hearing of the appeal, of a length to be determined by the Court;

(b) An order that there be no costs of this motion and no costs in the appeal as they relate to CCPI and NRHN;

(c) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

(a) Pursuant to Rules 13.02 and 13.03(2) of the Rules of Civil Procedure, CCPI and NRHN seek leave to intervene in this appeal to assist this Court by way of argument in considering the findings of the application judge regarding the Appellant's obligations under ss. 7 and 15 of the *Charter* to address the deprivations of the rights of the Respondents and other homeless persons in the Region and the Appellant's request for direction from the Court as to its constitutional obligations in a municipality in which there is a significant shortfall in emergency shelter spaces;

(b) The issues raised in this appeal regarding the ss. 7 and 15 *Charter* rights of the Respondents, who include both residents of the encampment at 100 Victoria and other homeless people in the Region lacking access to safe and accessible shelter, directly engage NRHN and CCPI's work advocating for protection of the rights of homeless persons and fall within their area of expertise in law and policy relating to homelessness;

(c) CCPI is a national committee founded in 1988 to bring together people with lived experience of poverty, advocates, and constitutional and human rights law experts. CCPI has been granted leave to intervene in numerous *Charter* cases

addressing poverty, homelessness, equality, and access to essential public benefits, most recently in *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7.

(d) NRHN is a pan-Canadian coalition of organizations, advocates, experts, and people with lived experience committed to the progressive realization of the right to adequate housing pursuant to the *National Housing Strategy Act*, SC 2019, c. 29. NRHN has worked extensively on the development and implementation of rights-based approaches to homelessness, including through submissions to the Federal Housing Advocate, parliamentary committees, UN human rights bodies, and municipal governments.

(e) CCPI and NRHN were granted leave to intervene before the application judge in the proceeding below to address *Charter* issues now raised on appeal;

(f) The proposed interveners' ongoing work to clarify the obligations of all orders of government to address homelessness in a manner consistent with the *Charter* will be affected by the decision in this case;

(g) The proposed interveners have an important perspective distinct from the immediate parties, because of their history of advocating for *Charter* rights interpretation that is inclusive of issues of homelessness; their research into positive measures to address homelessness; their experience in assisting governments to implement rights-based approaches to homelessness to ensure compliance with both national and international human rights obligations; and their ongoing community engagement with persons experiencing homelessness and other organizations regarding these issues.

(h) The proposed interveners have been widely recognized for their special expertise in the rights of homeless persons, under Canadian and international law, by parliamentary committees, government officials, legal practitioners and persons with lived experience of homelessness;

(i) As outlined in its draft factum, CCPI and NRHN will make a useful contribution that is distinct from any of the parties or interveners by addressing the following issues:

1. Whether the application judge was correct in finding that the revised by-law's Transition Protocol does not satisfy the requirements of ss. 7 and 15 of the *Charter* because "it does not address the systemic issues related to rising homelessness or the underlying issues of insufficient shelter space and the lack of affordable housing";

2. Whether recognizing homelessness as an analogous ground under s. 15 clarifies the nature of the discrimination at issue in this case and the measures required to accommodate the needs of the Respondents and other homeless persons; and

3. Whether this Court's concerns in *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852, about judicially discoverable and manageable standards for assessing whether measures to address homelessness comply with the *Charter*, are answered in this case by reliance on human rights standards adopted in the Region's Plan to end Chronic Homelessness (PECH) and in the *National Housing Strategy Act*.

(j) The proposed interveners will rely on the record as filed by the parties;

(k) The proposed interveners will not seek an order of costs and request an order that costs not be awarded against them.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(l) The affidavit of Bruce Porter, affirmed September 28, 2026;

(m) The affidavit of Michèle Biss, affirmed October 1 2026;

(n) Draft Factum.

October 21, 2026

Professor emerita Martha Jackman (LSO # 31426C)
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Lawyer for the Proposed Interveners
Charter Committee on Poverty Issues and the National Right to Housing Network

THE REGIONAL MUNICIPALITY OF WATERLOO Appellant (Applicant/Cross Respondent)	and	JOSEPHINA DUGAS et al. Respondents (Respondents/Cross-Applicants)

Court File Nos.: COA-26-CV-0836 / COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION FOR LEAVE TO INTERVENE OF THE PROPOSED INTERVENERS THE CHARTER COMMITTEE ON POVERTY ISSUES AND THE NATIONAL RIGHT TO HOUSING NETWORK

Professor emerita Martha Jackman
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Lawyer for the Charter Committee on Poverty Issues and the National Right to Housing Network

TAB 2

Court File Nos: COA-26-CV-0836 COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant/Cross-Respondent)
Respondent on Motion

and

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

-and-

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents (Respondents/Cross-Applicants)
Respondents on Motion

AFFIDAVIT OF BRUCE PORTER, CHARTER COMMITTEE ON POVERTY ISSUES

I, Bruce Porter, in the Town of York Harbour in the Province of Newfoundland and Labrador

AFFIRM:

1. I am the Co-ordinator of the Charter Committee on Poverty Issues (CCPI) and as such I have personal knowledge of the matters contained in this affidavit. I am a human rights consultant, the Executive Director of the Social Rights Advocacy Centre, and a Maytree Fellow.

2. I make this affidavit in support of the motion by CCPI for leave to intervene jointly with the National Right to Housing Network (NRHN) as a friend of the court in this appeal, to file a factum of up to 10 pages, or such other length as the Court may permit, and to make oral argument of a length to be determined by the Court at the hearing of the appeal.

The Charter Committee on Poverty Issues (CCPI)

3. The Charter Committee on Poverty Issues (CCPI) is a national committee established in 1988 which brings together low-income representatives and experts in human rights, constitutional law and poverty law for the purpose of assisting disadvantaged groups in Canada to secure and assert their rights under the *Charter*, human rights legislation, other Canadian law, and international human rights law. CCPI was initiated with support from the Court Challenges Program of Canada to address the absence of cases being advanced to protect the rights of people living in poverty and homelessness under the *Charter*, to address the need for interventions in cases of significance to those groups, and to provide their perspective and expertise.

4. CCPI's activities have included research and consultation with other organizations and members of marginalized and vulnerable groups, test case litigation, judicial and public education, engagement with governments in Canada and internationally, appearances before United Nations and other international bodies, and collaboration with non-governmental organizations and researchers in Canada and other countries.

CCPI's Litigation and Interventions in Previous Cases

5. CCPI has initiated and intervened in a significant number of cases at various levels of court to ensure that issues of socio-economic disadvantage, and the perspectives of persons living in poverty, are effectively presented before courts and tribunals through high-quality submissions grounded in reliable evidence. Based on instructions from both its low-income members and human rights experts, and on decades of experience working to secure meaningful protection of the rights of marginalized communities, CCPI has consistently emphasized that the *Charter* rights of the most disadvantaged require measures by governments to ensure access to the basic requirements of life, dignity, and security, including housing, health care, nutrition, and other necessities. While more advantaged groups may predominantly rely on restraints on state action to protect their rights, those living in poverty or homelessness often require governments to take affirmative steps to remedy systemic deprivation and inequality.

6. CCPI has intervened in fourteen appeals before the Supreme Court of Canada. These include *Symes v Canada*, [1993] 4 S.C.R. 69; *R. v. Prosper*, [1994] 3 S.C.R. 236; *R. v. Matheson* [1994] 3 S.C.R. 328; *Walker v. Prince Edward Island*, [1995] 2 S.C.R. 407; *Thibaudeau v. Canada*, [1995] 2 S.C.R. 627; *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *New Brunswick (Minister of Health and Community Services) v. G. (J.),* [1999] 3 S.C.R. 46; *Lovelace v. Ontario*, [2000] 1 S.C.R. 950; *Gosselin v. Quebec (Attorney General)*, [2002] 4 S.C.R. 429; *R. v. Wu*, [2003] 3 S.C.R. 530; *Chaoulli v. Quebec (Attorney General)*, [2005] 1 S.C.R. 791; *R. v. Caron*, [2011] 1 S.C.R. 78; and *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7.

7. CCPI intervened before a special three person Board of Inquiry in *Kearney v. Bramalea Ltd. (No. 2)*, 1998 CanLII 29852 (ON HRT) in which systemic practices in tenant selection which exclude low income applicants were found to constitute adverse effect discrimination under ss. 2 and 11 of Ontario's *Human Rights Code*, RSO 1990, c. H-19.

8. CCPI intervened before the Ontario Superior Court of Justice and the Ontario Court of Appeal in *Tanudjaja v. Attorney General (Canada) (Application)*, 2013 ONSC 5410, and *Tanudjaja v. Canada (Attorney General),* 2014 ONCA 852, with respect to positive obligations under ss. 7 and 15 of the *Charter* to ensure the rights of those who are homeless.

9. The application judge granted CCPI leave to intervene jointly with NRHN in *The Regional Municipality of Waterloo v. Persons Unknown and to be Ascertained*, Court File No. CV-25-00000750-0000, to make submissions concerning measures required under ss. 7 and 15 to address homelessness; the recognition of homelessness as an analogous ground under s. 15; and whether the Region of Waterloo's Plan to End Chronic Homelessness and its associated human-rights commitments provide judicially manageable standards to assess compliance with *Charter* obligations.

10. CCPI's facta have been relied upon in multiple decisions and are widely referenced by researchers, advocates, and community organizations across Canada and internationally.

11. In *Eldridge v. British Columbia (Attorney General)*, CCPI addressed the question of whether s. 15 may impose obligations on governments to address the needs of disadvantaged groups where the source of inequality does not arise from direct state action.

12. In *New Brunswick (Minister of Health and Community Services) v. G. (J.),* CCPI addressed the question of whether s. 7 may require positive measures to ensure access to counsel where the rights to security of the person and a fair hearing are at stake.

13. In *Gosselin v. Quebec (Attorney General)*, CCPI addressed the question of whether the drafting history of the *Charter*, together with Canada's international human rights obligations, support recognition of obligations under s. 7 to ensure access to sufficient social assistance to cover basic requirements.

14. In the motion to strike in *Toussaint v. Canada (Attorney General)*, 2022 ONSC 4747, CCPI challenged the mischaracterization of the s. 7 challenge in that case, to the denial of access to health care necessary for the protection life, as a claim to a socio-economic right that is not protected in the *Charter* rather than as a legitimate claim to the right to life under s. 7.

15. In its more recent intervention before the Supreme Court of Canada in *Quebec (Attorney General) v. Kanyinda*, CCPI addressed the question of whether s. 15's guarantee of substantive equality may require governments to ensure access to subsidized child care for low income parents to address the systemic disadvantage faced by women in the labour market linked to childcare responsibilities.

CCPI's Recognized Expertise in the Rights of People Experiencing Homelessness and Poverty

16. CCPI's role in advancing interpretations of the *Charter* and other laws that reflect the perspectives and rights of persons experiencing poverty or homelessness has been widely recognized. The National Judicial Institute has drawn on CCPI's expertise to support social context education for judges in multiple provinces. CCPI has also been invited to appear before

parliamentary committees, including the Special Joint Committee of the Senate and the House of Commons on a Renewed Canada to address the relationship between the *Charter* and a proposed social charter and the House of Commons Standing Committee on Justice respecting public interest litigation and the Court Challenges Program.

17. Internationally, CCPI has been invited by the International Commission of Jurists, the Constitutional Assembly of South Africa, Forum Asia, the Committee for the Administration of Justice in Northern Ireland, and the Office of the United Nations High Commissioner for Human Rights to make presentations. CCPI has provided analysis and advice to governments and intergovernmental bodies regarding the protection of the rights of people living in poverty or homelessness.

18. CCPI has also been a research partner in national multi-year collaborations focused on social rights accountability, involving four universities and multiple community organizations and experts. This research included examination of the relationship between *Charter* rights and socio-economic rights, including the right to adequate housing.

19. CCPI brings a distinct perspective to the issues before the Court in this appeal. Its long-standing engagement with courts, human rights bodies, governments, and affected communities regarding measures required to address homelessness and poverty provides important context for the interpretation of the *Charter* rights at issue in this case.

20. CCPI proposes to make joint submissions with NRHN as described in the Draft Factum.

21. CCPI and NRHN will work with the schedule agreed to by the parties. We will not introduce new evidence and will rely on the record as filed by the parties. We will not seek an award of costs and request an order that costs will not be awarded against us.

AFFIRMED REMOTELY in the Town of York Harbour, in the Province of Newfoundland and Labrador, this 28th day of September, 2026 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely

Martha Jackman LSO # 31426C
A Commissioner for Taking Affidavits

Bruce Porter

THE REGIONAL MUNICIPALITY OF WATERLOO
Appellant (Applicant/Cross-Respondent)

And

JOSEPHINA DUGAS et al.
Respondents (Cross-Applicants)

Court File Nos.: COA-26-CV-0836 / COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

PROCEEDING
COMMENCED
AT TORONTO

AFFIDAVIT OF BRUCE PORTER
AFFIRMED SEPTEMBER 28, 2026

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Lawyer for the Charter Committee on Poverty Issues (CCPI) and the National Right to Housing Network (NRHN)

TAB 3

Court File Nos.:COA-26-CV-0836 COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

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Respondents (Respondents/Cross-Applicants)
Respondents on Motion

AFFIDAVIT OF MICHÈLE BISS, NATIONAL RIGHT TO HOUSING NETWORK, PROPOSED INTERVENER

I, Michèle Biss, of City of Ottawa in the Province of Ontario AFFIRM:

1. I am the Executive Director of the National Right to Housing Network (NRHN) and as such I have personal knowledge of the matters contained in this affidavit. I am a human rights lawyer (LSO # 66567R) and have worked at NRHN since its inception in 2019.

2. I make this affidavit in support of the motion by the NRHN for leave to intervene as a friend of the court jointly with the Charter Committee on Poverty Issues (CCPI) in this appeal.

The National Right to Housing Network (NRHN)

3. The NRHN is a pan-Canadian coalition of more than 2,000 organizations, advocates, experts and people with lived experience of homelessness committed to the progressive realization of the right to adequate housing in Canada as guaranteed under international human rights law and affirmed under the *National Housing Strategy Act* (SC 2019, c. 29, s. 313).

4. After a civil society campaign for federal legislation for the implementation of the right to adequate housing in Canada, the *National Housing Strategy Act* (*NHSA*) was adopted by the Parliament of Canada in 2019, recognizing the right to adequate housing as a fundamental human right and committing the federal government to the progressive realization of the right to adequate housing in accordance with obligations under international human rights law.

5. The *NHSA* requires the Minister of Housing and Infrastructure to develop and maintain a national housing strategy to further the progressive realization of the right to housing, taking into account key principles of a human rights-based approach to housing, establishing goals, timelines and desired outcomes, and focusing on improving housing outcomes for persons in greatest need. It also establishes mechanisms through which the government is to be held accountable to its commitments with respect to the right to adequate housing, including a Federal

Housing Advocate, a National Housing Council and Review Panels appointed by the National Housing Council to hold hearings into systemic issues within federal jurisdiction.

6. The NRHN officially launched on 6 February 2020, soon after the *NHSA* received Royal Assent, to assist civil society organizations and those experiencing homelessness or precarious housing to utilize the new government accountability mechanisms contained in the *NHSA* and to promote the implementation of the right to adequate housing in Canada.

7. Governance of the NRHN rests with a Steering Committee whose members bring a wealth of experience in diverse areas, including human rights law, housing policy, anti-poverty advocacy, and crucial lived experience of housing insecurity and homelessness. Day-to-day activities are carried out by a small paid staff and a set of issue-specific working groups including a legal working group focusing on promoting the right to adequate housing through the interpretation of the *Canadian Charter of Rights and Freedoms* and other domestic law.

8. The NRHN makes regular submissions to the National Housing Council to guide the implementation of the right to housing and actively supports partners in engaging with reviews conducted by the Federal Housing Advocate or by Review Panels.

9. NRHN staff have published extensively on international human rights law and its application in Canada. This includes a literature review on the Progressive Realization of the Right to Housing commissioned by the National Housing Council.

10. The NRHN created an online right to housing training to help members of the National Housing Council apply international human rights law and norms, which is now mandatory for members.

11. In 2023-2024 NRHN acted as an "engagement partner" for the Federal Housing Advocate's comprehensive review of government responses to homeless encampments, including assessing the responsibilities and legal obligations of municipal governments. This work included supporting partners in organizing engagement sessions with encampment residents, conducting media interviews, and developing public education and advocacy materials, including a webinar and Toolkit for Advocacy for a National Encampment Response Plan, which included sample letters to local government representatives and communications messaging.

Promoting Implementation of the Right to Adequate Housing by All Orders of Government

12. NRHN has worked extensively through its partner organizations and working group members to promote the progressive realization of the right to adequate housing by all orders of government in Canada. This work includes encouraging municipalities to recognize that under international law the responsibility to implement the right to adequate housing applies to all orders of government and encouraging municipalities to adopt plans or charters that commit to implementing the right to adequate housing in accordance with obligations under international human rights law, the *Charter* and human rights legislation in areas of municipal authority.

13. NRHN has conducted research and public legal education to promote interpretations of the *Charter* and domestic law that are consistent with obligations to realize the right to adequate housing under international human rights law.

14. NRHN has conducted research and public education on all aspects of the right to adequate housing under international law. It has been commissioned to provide research on the right to

adequate housing by the Office of the Federal Housing Advocate and has been retained to provide training to multiple federal government departments on the right to adequate housing under international human right law and how it should be implemented within various areas of federal jurisdiction and in inter-governmental agreements.

15. NRHN has conducted research and provided training and public education materials for lawyers, government officials and housing advocates on the prohibition of forced eviction under international law and its application to persons without legal security of tenure or living in encampments. It has conducted research and provided public education on established legal standards under international human rights regarding the components of adequate housing under international human rights law, including standards reflected in rights-based municipal approaches to homelessness, including the Region of Waterloo's Plan to End Chronic Homelessness. NRHN has also conducted public education on the implications of the application judge's decision for the *Charter* rights of homeless persons and encampment residents.

16. The application judge granted NRHN and CCPI leave to intervene jointly in the proceeding below. NRHN's intervention addressed the Region's request for guidance on its constitutional obligations to homeless persons, including how ss. 7 and 15 of the *Charter* should be interpreted in light of the Region's rights-based commitments and the *NHSA*.

NRHN's Well- Recognized Expertise

17. NRHN has a recognized expertise in the structural causes of homelessness and in how meaningful engagement with homeless persons and with encampment residents can lead to effective solutions to homelessness. It has been called upon by the Federal Housing Advocate, the National Housing Council and many government officials to share this expertise.

18. NRHN also has recognized expertise in the overlapping responsibilities for housing and human rights by different orders of government in Canada. NRHN was an invited participate at the Federal-Provincial-Territorial (FPT) Meeting of Ministers Responsible for Human Rights in 2023, which focused on the implementation of Canada's international human rights obligations, including with respect to addressing homelessness. NRHN has also engaged regularly with officials of the two inter-governmental committees that oversee the implementation of international human rights in Canada, the Continuing Committee of Officials on Human Rights (CCOHR) and the FPT Senior Officials Committee Responsible for Human Rights (SOCHR). NRHN presented as a witness to the Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development in 2024 when the Subcommittee was conducting a review of the Implementation of recommendations from Canada's Universal Periodic Review before the UN Human Rights Council.

19. Through its work in implementing the right to adequate housing under the *NHSA* and promoting the implementation of the right to adequate housing by other orders of government based on the rights-based approach, NRHN has developed a recognized expertise in a rights-based approach to housing and homelessness.

NRHN's Different and Useful Perspective

20. NRHN offers a different perspective than the parties in this appeal by providing a broader lens through which to assess the *Charter* rights of encampment residents and other homeless persons informed by an extensive network of organizations and individuals addressing issues similar to those being faced in the Region of Waterloo.

21. The NRHN also provides a different perspective on the responsibilities of municipal governments. NRHN has been directly involved in developing and promoting the rights-based approach to homelessness that has been affirmed by the Region of Waterloo in its Plan to End Chronic Homelessness, and it is able to provide the perspective of organizations involved in promoting that approach across Canada as an effective means to ensure the rights of homeless persons, including their rights under ss. 7 and 15 of the *Charter*. NRHN has submitted reports to UN human rights bodies regarding homelessness and human rights in Canada and has extensive experience in ensuring that the right to adequate housing under international human rights law is given domestic legal effect through Canadian law and policy, including through rights-based municipal initiatives to address homelessness.

Proposed Submissions

22. NRHN proposes to make joint submissions with CCPI to assist the Court as outlined in the Draft Factum.

23. NRHN will not seek an award of costs and requests an order that costs will not be awarded against it. NRHN will not adduce any evidence and will rely on the record as filed by the parties. It will adhere to any schedule agreed to by the parties so as not to create any delay.

AFFIRMED REMOTELY by the Affiant, located in Ottawa, Ontario, before me, located in Ottawa, Ontario, this 1st day of October, 2026,

in accordance with O. Reg. 431/20.

Martha Jackman LSO # 31426C
A Commissioner for Taking Affidavits

Michèle Biss

THE REGIONAL MUNICIPALITY OF WATERLOO
Appellant (Applicant/Cross-Respondent)

And

JOSEPHINA DUGAS et al.
Respondents (Cross-Applicants)

Court File Nos.: COA-26-CV-0836 / COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

PROCEEDING
COMMENCED
AT TORONTO

AFFIDAVIT OF MICHÈLE BISS
AFFIRMED OCTOBER 1, 2026

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TAB 4

Court File Nos.:COA-26-CV-0836 COA-26-CV-0897

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO

Appellant (Applicant/Cross-Respondent)
Respondent on Motion

and

THE ATTORNEY GENERAL OF ONTARIO

Appellant (Intervener)
Respondent on Motion

and

JOSEPHINA DUGAS, TERRA-LYNN WEBER, AVERY AMENT, AARON PRICE, JEREMY LINTON, JEREMY NICHOL, JAMES HAMMOND, JAKOB STUBBS, JAMES DAVIS, JASON PAUL, NOAH HELSBY, JOSEPH BRADLEY, JOSEPH SADLER, JULIE YOUNG, KYLE YORK, MEGAN LOPES, STEPHANIE MCMILLAN, JEFFREY COUTO, JORDAN CAMM, TERRANCE COLE, XANDER HARKER, CHARLES KOCHER, ALINE JEFFERY, MICHAEL JEFFERY, AND PERSONS UNKNOWN

Respondents (Respondents/Cross-Applicants)
Respondents on Motion

DRAFT FACTUM OF THE PROPOSED INTERVENERS

THE CHARTER COMMITTEE ON POVERTY ISSUES (CCPI)

AND THE NATIONAL RIGHT TO HOUSING NETWORK (NRHN)

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PART I - OVERVIEW

1. This appeal raises one of the most critical human rights issues facing our country: what protection, if any, does the *Charter* offer those in our communities who are homeless? The question in this case is not whether the *Charter* confers a free-standing right to housing, or whether courts should intrude on municipal housing policy. It is what measures are required by ss. 7 and 15 of the *Charter* to address the deprivations of life and security of homeless persons found by the application judge, and the systemic inequality, marginalization and stigmatization that lie behind them.

PART II – ISSUES

2. CCPI/NRHN address three issues:

i) Whether the application judge was correct in finding that the amended by-law's Transition Protocol "does not adequately mitigate the s. 7 deprivations" because it "does not address the systemic issues related to rising homelessness …" and "does not address the underlying issues of insufficient shelter space and the lack of affordable housing"; [1]

ii) Whether recognizing homelessness as an analogous ground under s. 15 clarifies the nature of the discrimination at issue in this case and the measures required to accommodate the needs of the Respondents and other homeless persons; and

iii) Whether this Court's concerns in *Tanudjaja v Canada (Attorney General)* about judicially discoverable and manageable standards for assessing whether measures to address homelessness comply with the *Charter* are answered in this case by the application judge's reliance on international human rights standards adopted in the Plan to End Chronic Homelessness and the *National Housing Strategy Act* (*NHSA*).

PART III – FACTS

3. CCPI/NRHN rely on the facts set out in the Appellant's factum.

[1] *The Regional Municipality of Waterloo v Named Respondents and Persons Unknown*, 2026 ONSC 2971 [Decision] at paras 189–190.

PART IV - ARGUMENT

A. Tanudjaja Leaves the Issues in this Appeal Open

4. In *Tanudjaja*,[2] Lederer J. granted a motion to strike on the grounds that there could be no positive obligation on Ontario or Canada to address homelessness, and that homelessness was not an analogous ground.[3] This Court did not endorse those findings.[4] The majority found the claim was non-justiciable because it challenged a diffuse range of laws and policies, was pleaded as a free-standing right to housing, and lacked a sufficient legal component to anchor the analysis in judicially discoverable and manageable standards.[5] It expressly declined to decide the limits of positive obligations to address homelessness in a justiciable context, or whether homelessness may be an analogous ground.[6] Justice Feldman, in dissent, held that it was an error to treat s. 7 obligations to address homelessness as foreclosed by Supreme Court jurisprudence.[7]

5. The present appeal has all the legal anchors *Tanudjaja* lacked. It asks the Court to determine if specific measures to ensure access to shelter or housing for identified encampment residents are sufficient to satisfy ss. 7 and 15 obligations toward the Respondents, who include homeless persons outside of the encampment. It provides precise data from "federally mandated" monitoring of the number of chronically homeless in the Region,[8] along with a rights-based Plan to End Chronic Homelessness by 2030 (PECH)[9] to address "these longer-term issues" based on international and domestic human rights standards.[10] And it has a government actor that has

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[2] *Tanudjaja v Canada (Attorney General)*, 2014 ONCA 852 [Tanudjaja ONCA]; *Tanudjaja v Attorney General (Canada) (Application)*, 2013 ONSC 5410 [Tanudjaja ONSC].
[3] *Tanudjaja ONSC* at paras 82, 103, 136–137, 143–146.
[4] The Attorney General erroneously states that this Court affirmed Lederer J.'s finding that s. 7 imposes no positive obligations: Factum of the Attorney General of Ontario [Ontario Factum] at para 53. See also Appellant's Factum at para 61, fn 89.
[5] *Tanudjaja ONCA* at para 35.
[6] *Tanudjaja ONCA* at para 37.
[7] *Tanudjaja ONCA* at para 62.
[8] Responding Record Vol 4 p 30.
[9] Waterloo Region, "The Plan to End Chronic Homelessness: Navigating Complexity Together: A Roadmap to Functional Zero by 2030", (PECH) Ex.B to Alton Affidavit ("PECH"), RARv.2, p 15 citing Reaching Home Canada's Homeless Strategy Directives 2023 and PECH p 70.
[10] Decision at para 61.

sought judicial direction regarding its constitutional obligations in the context of a historic homelessness crisis. The application judge was therefore entitled – and required – to address the questions *Tanudjaja* left open.[11]

B. S. 7 Requires Measures to Address the Needs of Homeless Persons Other than Designated Encampment Residents

6. There are two dimensions to the Region's request for guidance regarding the constitutionality of the by-law: first, its obligations toward those designated as encampment residents subject to removal and, second, its obligations toward the other Respondents who were not residents of the encampment and other homeless people in the Region. The Appellant's s. 7 grounds of appeal put the second dimension squarely before this Court, by arguing that the application judge erred in considering harms to life and security associated with homelessness generally, and in relying on international human rights as adopted in the *NHSA* and the PECH to inform the *Charter* analysis.[12] The application judge found that moving selective, designated encampment residents into existing emergency shelter spaces without addressing the needs of other homeless persons would leave the latter, including many of the Respondents, without access to shelter, housing or support services, or even a place to pitch a tent.[13]

7. The application judge distinguished a claim that the *Charter* confers a "freestanding right to housing", which is not advanced in this case, from a finding that where homelessness foreseeably threatens life and security of the person, government housing policies and programs must contain rights-based measures to address those threats.[14] This reasoning is supported by Supreme Court jurisprudence. In *Irwin Toy v Quebec (Attorney General)*, the Court recognized that the exclusion of property rights from s. 7 does not foreclose the protection of rights with an

[11] Decision at paras 9–10, 252; Appellant's Factum at para 102.
[12] Appellant's Factum at paras 54, 60–66; Notice of Appeal of the Regional Municipality of Waterloo, dated June 22, 2026 [Notice of Appeal] at para 6.
[13] Decision paras 189–190.
[14] Decision at para 138.

economic component that are fundamental to life, liberty or security of the person, such as the right to shelter and other rights recognized in international human rights law.[15] In *New Brunswick (Minister of Health and Community Services) v G.(J.)*, the Court ruled that "[t]he omission of a positive right to state-funded counsel in s. 10 … does not preclude an interpretation of s. 7 that imposes a positive constitutional obligation on governments to provide counsel in those cases when it is necessary to ensure a fair hearing."[16] It held that resource-allocation concerns belong primarily under s. 1.[17] In *Gosselin v Quebec (Attorney General)*, the majority left open the possibility of s. 7 obligations to secure access to adequate social assistance for persons in need, while finding that the evidentiary record could not support the claim in that case.[18] And, in *Toussaint v Canada (Attorney General)*, the Ontario Superior Court rejected Canada's mischaracterization of a s. 7 claim challenging the denial of access to essential health care as a socio-economic rights claim to free health care, instead emphasizing that the claim was about access to a benefit that was necessary to protect the s. 7 right to life.[19]

8. The same reasoning applies here. The Region regulates public space and sheltering through by-laws; it operates and funds emergency responses; it has adopted a rights-based plan to end chronic homelessness; and it has asked the Court what the *Charter* requires. In this context, the application judge correctly found that s. 7 requires adequate measures to mitigate the deprivation of *Charter* rights caused by homelessness for the Respondents and other homeless people in the Region.

9. The critical question raised in this case is whether leaving homeless persons to face the documented risks of living outside in our country, whether in an encampment or on some other

[15] *Irwin Toy Ltd v Quebec (Attorney General)*, [1989] 1 SCR 927, 1989 CanLII 87 (SCC) at p 1003.
[16] *New Brunswick (Minister of Health and Community Services) v G (J)*, [1999] 3 SCR 46, 1999 CanLII 653 (SCC) [G (J)] at para 107.
[17] *G (J)* at para 108.
[18] *Gosselin v Quebec (Attorney General)*, 2002 SCC 84, [2002] 4 SCR 429 at para 83.
[19] *Toussaint v Canada (Attorney General)*, 2022 ONSC 4747 [Toussaint] at paras 133–134, 138.

property, is compliant with ss. 7 and 15 and the broader purposes of the *Charter*. The *NHSA* and PECH identify the measures required to move beyond an encampment-only response to homelessness to safeguard critical *Charter* rights. The *NHSA* requires a strategy establishing goals relating to housing and homelessness and identifying priorities, initiatives, timelines, and desired outcomes, with participatory processes and a focus on persons in greatest need.[20] The application judge found that the PECH adopts this rights-based approach at the regional level.[21]

10. The requested direction from the application judge identified two linked forms of *Charter* compliance. First, where indoor shelter or housing is unavailable, the Region must not displace people from the only lawful sheltering location of last resort without an alternative lawful site or safe tenting protocol that ensures access to services and health care. Second, and equally important, the Region must implement the rights-based measures to which it has committed under the PECH, with goals and timelines, to reduce and eliminate the underlying homelessness that creates the risks to life and security of the person. The first is an interim safety requirement that is appropriately subject to judicial supervision. The second, advanced by the application judge in response to the Region's request for guidance, establishes that the *Charter* requires a longer-term strategy like the PECH to ensure that living outdoors in an encampment, described by the application judge as "a miserable and desperate place", is not mistaken for a *Charter* compliant response to homelessness or institutionalized as the entire answer.[22]

C. Recognition of Homelessness as an Analogous Ground and Substantive Equality

11. CCPI/NRHN adopt the Respondents' submissions on Dr. Kaitlin Schwan's evidence and the factors supporting the application judge's conclusion that homelessness is an analogous ground.[23] The application judge's recognition that the humanity and equal dignity and rights of

[20] *NHSA*, s. 5(2)(b)-(d).
[21] Decision at para 132; *NHSA*, ss 4–5.
[22] Decision at para 250.
[23] Decision at paras 204–210; Schwan Affidavit, paras 38–52.

homeless persons are at stake is obvious to anyone who has visited a Canadian city in winter, and belies the Appellant's characterization of homelessness as "a socioeconomic fact" that is "not a core element of a person's identity that is integral to their human dignity."[24]

12. The Supreme Court has emphasized that the analogous grounds analysis must preserve "the focus on equality for groups that are disadvantaged in the larger social and economic context."[25] Recognizing that homeless persons are an analogous group is not only grounded in s. 15's overriding purpose – "the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration"[26] – it is also consistent with its well-documented legislative history.[27] The initially narrower wording of s. 15 was expanded to include equal protection and benefit of the law, to ensure the *Charter* would act as a safeguard against precisely the kind of systemic exclusion and discrimination linked to socio-economic inequality that confront homeless persons today.[28]

13. Substantive equality means that a failure to provide a benefit necessary to equality for a protected group may constitute discrimination contrary to s.15. In *Vriend v Alberta*, the failure to provide human rights protection based on sexual orientation was discriminatory because it adversely affected gay and lesbian persons in comparison to straight persons.[29] In *Eldridge v British Columbia (Attorney General)*, the failure to fund sign-language interpretation adversely affected deaf patients, constituting discrimination based on disability.[30] In *Fraser v Canada (Attorney General)*, the denial of the opportunity for RCMP members who job-shared to buy back full-time pension credit disproportionately affected women and discriminated on the

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[24] Appellant's Factum at para 90.
[25] *Kahkewistahaw First Nation v Taypotat*, 2015 SCC 30, [2015] 2 SCR 548 at para 19.
[26] *Andrews v Law Society of British Columbia*, [1989] 1 SCR 143, 1989 CanLII 2 (SCC) at 163.
[27] Robin Elliot, "Interpreting the *Charter* – Use of the Earlier Versions as an Aid" (1982) UBC L Rev (Charter ed) 11 at 37–39.
[28] Kerri A Froc, "A Prayer for Original Meaning: A History of Section 15 and What It Should Mean for Equality" (2018) 38 NJCL 35 at 48–54.
[29] *Vriend v Alberta*, [1998] 1 SCR 493, 1998 CanLII 816 (SCC) at paras 81–84.
[30] *Eldridge v British Columbia (Attorney General)*, [1997] 3 SCR 624, 1997 CanLII 327 (SCC) at paras 71–73, 80, 94.

grounds of sex.[31] In *Quebec (Attorney General) v Kanyinda*, the denial of access to subsidized childcare disproportionately affected women, likewise constituting sex discrimination.[32]

14. The same analysis applies here. S. 15, like s. 7, does not confer a freestanding right to adequate housing but where the failure to ensure access to shelter or housing, as required by international law adopted in the PECH or the *NHSA*, has the effect of reinforcing, perpetuating or exacerbating disadvantage, this may constitute discrimination against groups that are adversely affected.[33] In this case, the application judge found on the evidence that the Transition Protocol was underinclusive because it failed to address the need of homeless people for adequate housing, accessible shelter, or a site to erect tents and left the systemic shortage of shelter and affordable housing untouched. These omissions have a differential and disproportionate effect on people experiencing homelessness, perpetuating systemic discrimination, disadvantage and exclusion and denying them the equal benefit and protection of laws and programs governing access to shelter and housing, contrary to the letter and promise of section 15.[34]

D. The *NHSA* and PECH Provide Judicially Manageable Standards

15. This Court's central concern in *Tanudjaja* was the absence in that case of judicially discoverable and manageable standards for assessing the adequacy of government measures to address homelessness in order to protect s.7 rights.[35] That concern is answered here. The application judge properly relied on this Court's decision in *Mathur v Ontario* and the Federal Court of Appeal's decision in *La Rose v Canada* to find that where international law obligations, commitments and standards have been incorporated into domestic law or policy, as in the *NHSA* and the PECH, these provide relevant legal standards for the court to consider "whether, through

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[31] *Fraser v Canada (Attorney General)*, 2020 SCC 28, [2020] 3 SCR 113 [Fraser] at paras 42–54, 83–86, 136.
[32] *Quebec (Attorney General) v Kanyinda*, 2026 SCC 7 [Kanyinda] at paras 7–11, 86–90.
[33] *Fraser* at paras 42–54; *Kanyinda* at paras 42–47.
[34] Decision at paras 189–190, 231–232.
[35] *Tanudjaja ONCA* at para 33.

the lens of that voluntarily imposed obligation, the By-Laws are *Charter* compliant and will not lead to a deprivation of rights."[36]

16. In *Mathur*, this Court rejected Ontario's reliance on *Tanudjaja* to argue that a s.7 challenge to inadequate targets for reducing carbon emissions was outside of the court's competence because, as in *Tanudjaja*, there was no judicially manageable legal standard for assessing the claim.[37] It found that "Ontario's argument that ordering a "science-based" target would be "so devoid of content as to be effectively meaningless" is belied by its choice stated in the Plan to align its Target to Canada's 2030 target under the international standard of the *Paris Agreement*."[38] In *La Rose*, the Federal Court of Appeal similarly found that the concerns raised in *Tanudjaja* regarding judicially manageable standards were addressed in that case by "linking the deprivation to the failure of Canada to meet its commitments in the *Paris Agreement* (Nationally Determined Contributions), commitments ratified by Parliament, and hence legally defined, objective standards against which the *Charter* claims can be assessed."[39]

17. The *NHSA* and the PECH perform an analogous function here. Parliament has declared that the right to adequate housing is a fundamental human right and it has imposed a statutory obligation on the federal government to adopt and maintain a rights-based plan to implement this right.[40] As a recipient of federal funding under the Reaching Home Program, the Region is required to participate in implementing the federal strategy by monitoring progress in reducing chronic homelessness in the Point-In-Time count, and to set mandatory targets for the reduction of chronic homelessness.[41] At the same time, the PECH brings international standards directly

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[36] Decision at para 138; *Mathur v Ontario*, 2024 ONCA 762 [Mathur OCA] at paras 70–72; *La Rose v Canada*, 2023 FCA 241 [La Rose] at paras 36–38.
[37] *Mathur v Ontario*, 2020 ONSC 6918 at paras 107–110, 118–119; *Tanudjaja ONCA* at para 34; *Mathur OCA* at paras 69–71.
[38] *Mathur OCA* at paras 69–71.
[39] *La Rose* at paras 37–38.
[40] *NHSA*, ss. 4, 5(1), 5(2)(b)-(d), 13(b), 13(h), 13.1(4), 17.1-17.2.
[41] PECH at pp 15, 70. 4th Affidavit of Peter Sweeney, affirmed September 12, 2025, para. 35, Appeal Book and Compendium, Tab 47, p. 324.

into the Region's own legal and policy framework in compliance with the requirement under Ontario's *Housing Services Act* to adopt and implement a plan to reduce homelessness, with goals and timelines.[42]

18. The Region argues that: "Unlike in *Mathur* … the PECH is an aspirational policy document, not a legislative commitment."[43] However, as this Court noted in *Mathur*, the *Cap and Trade Cancellation Act* only required Ontario to adopt a climate-change plan and establish emissions-reduction targets; it was the Plan adopted pursuant to the legislation that included a voluntary commitment to align targets with the *Paris Agreement* standards.[44] Similarly, the monitoring of homelessness and the identification of targets for reducing homelessness in the PECH are statutory requirements on the Region under the *Housing Services Act* and obligations accepted by the Region as a condition of receiving federal funding to address homelessness under the National Housing Strategy.[45] It is in the PECH that the Region has chosen to align its required plan with the international human rights law and the rights-based approach in the *NHSA*. As such, the homelessness reduction plan in the PECH is analogous to Ontario's carbon reduction plan in *Mathur*, and the application judge was correct to consider it.

19. The content of these obligations in the context of this case is both "judicially discoverable" and concrete. They require immediate measures to prevent displacement into life-threatening conditions, including another alternative lawful site or safe tenting protocol where no accessible indoor option exists. They also require a clear strategy or plan to address systemic issues of insufficient accessible shelter and supports and pathways to secure housing.[46] The standards

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[42] *Housing Services Act*, 2011, S.O. 2011, c. 6, Sched. 1, ss. 4-6, 12; 4th Affidavit of Peter Sweeney, aff'd September 12, 2025, para. 35, Appeal Book and Compendium, Tab 47, p. 324.
[43] Appellant's Factum at para 66.
[44] *Mathur OCA* at paras 17–22, 37, 71.
[45] Factum of the Applicant, dated March 13, 2026, at para 8, Respondents' Compendium, Vol 2, p 474; PECH at pp 15, 70; Factum of the Named Respondents, dated October 9, 2026 at para 35 [Respondents' Factum]; *Housing Services Act*, ss. 4–6; Respondents' Factum at para 28; *Reaching Home: Canada's Homelessness Strategy Directives.*
[46] Office of the Federal Housing Advocate, *Upholding Dignity and Human Rights: The Federal Housing Advocate's Review of Homeless Encampments – Final Report* (2024), Exhibit H to the

applied by all levels of government for addressing homelessness through an effective rights-based strategy provided the lens through which the application judge found that "The Region's Transition Protocol does not follow the obligations of a human rights-based approach in PECH and does not adequately mitigate the s.7 deprivations. … it does not address the systemic issues related to rising homelessness. It does not address the underlying issues of insufficient shelter space and the lack of affordable housing."[47]

20. This is the proper way to understand the application judge's reasons. His order ensured that the closure of the only lawful sheltering location of last resort would not put homeless people into greater danger. His reasons also recognize that a legal site to camp is not sufficient to protect the ss. 7 and 15 rights of the Respondents. He therefore affirmed that the Region must implement its human rights commitments in the PECH, to address the deprivation of the *Charter* rights of the Respondents and other homeless persons in the Region. The PECH adopts a shared municipal, provincial and federal commitment under both domestic and international law to address homelessness in practical, outcome-based strategies. The application judge did not err in finding this to be analogous to the s. 7 obligations to establish targets to address climate change in compliance with the *Charter*.

PART V - ORDER REQUESTED

21. As interveners, CCPI and NRHN take no position on the disposition of this appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Martha Jackman (LSO # 31426C)
Counsel for CCPI/NRHN

Affidavit of Marie-Josée Houle, sworn August 15, 2025, SupRAR V.3, pp. 782–83, 797–98 [*Upholding Dignity and Human Rights*].

[47] Decision at paras 189–190.

CERTIFICATE OF AUTHENTICITY AND ACCURACY OF AUTHORITIES

I certify that I am satisfied that:

(a) every authority cited in this factum is authentic; and

(b) every quotation from an authority appearing in this factum accurately reproduces the text of that authority.

_____
Martha Jackman (LSO # 31426C)
Counsel For CCPI/NRHN

SCHEDULE A

TABLE OF AUTHORITIES

Authority	Factum paragraph(s)
JURISPRUDENCE	
Andrews v Law Society of British Columbia, [1989] 1 SCR 143, 1989 CanLII 2 (SCC)	12
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Kerri A Froc, "A Prayer for Original Meaning: A History of Section 15 and What It Should Mean for Equality" (2018) 38:1 NJCL 35	12

Authority	Factum paragraph(s)
Robin Elliot, "Interpreting the Charter – Use of the Earlier Versions as an Aid" (1982) UBC L Rev (Charter ed) 11	12

THE REGIONAL MUNICIPALITY OF WATERLOO
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COURT OF APPEAL FOR ONTARIO

PROCEEDING
COMMENCED
AT TORONTO

DRAFT FACTUM OF THE PROPOSED INTERVENERS
THE CHARTER COMMITTEE ON POVERTY ISSUES
AND THE NATIONAL RIGHT TO HOUSING NETWORK

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COURT OF APPEAL FOR ONTARIO

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**MOTION RECORD OF THE PROPOSED INTERVENERS
THE CHARTER COMMITTEE ON POVERTY ISSUES
AND THE NATIONAL RIGHT TO HOUSING NETWORK**

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